



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[Docket No. EPA-R02-OAR-2011-0687, FRL-9635-4]**

#### **Approval and Promulgation of Implementation Plans; New York; Motor Vehicle Enhanced Inspection and Maintenance Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a proposed State Implementation Plan revision submitted by the New York State Department of Environmental Conservation. This revision consists of changes to New York's motor vehicle enhanced inspection and maintenance program that would eliminate the transient emission short test program as it relates to the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area. EPA is approving this State Implementation Plan revision because it meets all applicable requirements of the Clean Air Act and EPA's regulations and because the revision will not interfere with attainment or maintenance of the national ambient air quality standards in the affected area. The intended effect of this action is to maintain consistency between the State-adopted rules and the federally approved SIP.

EFFECTIVE DATE: This rule will be effective [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2011-0687. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212-637-4249.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381.

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## **I. What Action is EPA Taking?**

The EPA is approving a revision to the New York State Implementation Plan (SIP) pertaining to New York's motor vehicle enhanced inspection and maintenance (I/M) program that proposes to end tailpipe testing on December 31, 2010. This proposed SIP revision also outlines several changes to New York's enhanced I/M programs currently operating within the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area (referred to as NYMA). New York proposes to reduce the percentage of emissions waivers allowed within that area to 2% (from 3%). New York indicates that the decentralized program, which features on-board diagnostics inspections, is as effective as a centralized test-only program for modeling purposes.

## **II. What was included in New York's Proposed SIP submittal?**

After completing the appropriate public notice and comment procedures, on July 10, 2009, the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA a proposed SIP revision that includes changes to the New York State enhanced I/M program. The changes include a proposal to end tailpipe testing through the New York Transient Emissions Short Test (NYTEST) I/M program on December 31, 2010. The proposed revision also includes a reduction in the percentage of emissions test waivers allowed within NYMA to 2% (from 3%) beginning in calendar year 2008. The SIP revision includes MOBILE6 vehicle emission modeling software (MOBILE6) demonstration for the high enhanced I/M performance standard.

On February 15, 2011, NYSDEC made a supplemental SIP submittal to EPA which included recent revisions to Title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 217, "Motor Vehicle Emissions," and the New York State Department of Motor Vehicles (NYSDMV)

regulation found at Title 15 NYCRR Part 79, “Motor Vehicle Inspection.” New York adopted these rule revisions to end the NYTEST I/M program. This submittal was also subject to public notice and comment. On September 16, 2011 (76 FR 57696), EPA proposed to approve New York’s revised I/M program. For a detailed discussion on the content and requirements of the revisions to New York’s regulations, the reader is referred to EPA’s proposed rulemaking action.

### **III. What Comments Did EPA Receive in Response to its Proposal?**

In response to EPA’s September 16, 2011 proposed rulemaking action, EPA received no comments.

### **IV. Summary of Conclusions**

EPA’s review of the materials submitted indicates that New York has revised its I/M program in accordance with the requirements of the Clean Air Act, 40 CFR Part 51 and all of EPA’s technical requirements for an approvable enhanced I/M program. EPA is approving the revisions to the Title 6, New York Codes, Rules and Regulations (NYCRR), Part 217, “Motor Vehicle Emissions,” Subparts 217-1, 217-4 and the adoption of new Subpart 217-6, as effective on December 5, 2010, and the New York State Department of Motor Vehicles (NYSDMV) regulation Title 15 NYCRR Part 79 “Motor Vehicle Inspection,” Sections 79.1–79.15, 79.17, 79.20, 79.21, 79.24, 79.25, as effective on December 29, 2010, which incorporate the State’s motor vehicle I/M program requirements. The Clean Air Act gives states the discretion in program planning to implement programs of the state’s choosing as long as necessary emission reductions are met. EPA is also approving New York’s performance standard modeling demonstration, which reflects the State’s I/M program as it is currently implemented in the NYMA as well as throughout New York State.

## V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 1, 2012.

Judith A. Enck,  
Regional Administrator  
Region 2



Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart HH - New York

2. In §52.1670, the table in paragraph (c) is amended by revising the entry under Title 6 for Part 217 and the entry under Title 15 for Part 79 to read as follows:

§52.1670 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

EPA - Approved New York State regulations

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6: * * * * *			
Part 217, Motor Vehicle Emissions:  Subpart 217-1, Motor Vehicle	12/ 5/ 10	[Insert date of publication] [Insert page number where the	

Enhanced Inspection and  
Maintenance Program  
Requirements Until December 31,  
2010

document  
begins]

Subpart 217-4, Inspection and      12/ 5/ 10  
Maintenance Program Audits Until  
December 31, 2010

[Insert date of  
publication] [Insert  
page number  
where the  
document  
begins]

Subpart 217-6, Motor Vehicle      12/5/10  
Enhanced Inspection and  
Maintenance Program  
Requirements Beginning January  
1, 2011

[Insert date of  
publication] [Insert  
page number  
where the  
document  
begins]

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Title 15:

Part 79, "Motor Vehicle Inspection  
Regulations"

Sections 79.1–79.15, 79.17, 79.20,      12/29/10  
79.21, 79.24, 79.25

[Insert date of  
publication] [Insert  
page number  
where the  
document  
begins]